

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No 1415 to 1420 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

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2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

SPL. LAND ACQ. OFFICER

Versus

RAYSINGBHAI SOMABHAI

Appearance:

FIRST APPEALS NO. 1415/95 to 1417/95

MR MR RAVAL AGP for appellants

MR SANJAY M AMIN for respondent/s - claimant/s

FIRST APPEALS NO. 1418/95 to 1420/95

MR HL JANI, AGP for appellants

MR SANJAU M AMIN for respondent/s - claimant/s

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 15/03/99

ORAL COMMON JUDGEMENT

(Per : Panchal, J.)

By means of filing these appeals under section 54 of the Land Acquisition Act, 1984 read with section 96 of the Code of Civil Procedure, 1908, the appellants have challenged legality of common judgment and award dated December 30, 1993 rendered by the learned Assistant Judge, Nadiad, in Land Acquisition Reference Cases No.888/91 to 893/91. All the above-referred to references were consolidated with Land Reference Case No.891/91, which was treated as main case and in which parties had led common evidence. The lands of the respondents-claimants were placed under acquisition pursuant to publication of notification on June 26, 1989 which was issued under section 4(1) of the Land Acquisition Act. As common questions of fact and law are involved in these appeals, we propose to dispose of them by this common judgment.

2. Executive Engineer, Division 3/6, Thasara had proposed to the State Government to acquire lands of village Masra, Taluka : Thasara, District : Kheda for public purpose of Khumarvada Branch of Narmada Canal. On scrutiny of the said proposal, the State Government was satisfied that lands of village Masra were likely to be needed for the said public purpose. Therefore, notification under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) was issued, which was published in Official Gazette on June 26, 1989. Therein, lands which were proposed to be acquired were specified. Land owners were served with notices under section 4 of the Act and they had filed their objections against the proposed acquisition. After considering their objections, Special Land Acquisition Officer, Shedhi Irrigation Project, Unit No.8 had forwarded his report to the State Government as contemplated by section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of village Masra which was specified in the notification published under section 4(1) of the Act were needed for public purpose of Khumarvada Branch of Narmada Canal. Therefore, declaration under section 6 of the Act was made which was published in the Official Gazette on February 15, 1990. The interested persons were thereafter served with notices under section 9 of the Act for determination of compensation. The claimants appeared before Special Land Acquisition Officer and claimed compensation at the rate of Rs. 20/- per sq.mt., but having regard to the materials placed before him, Special Land Acquisition Officer by his award dated December 7, 1990 offered

compensation to the claimants at the rate of Rs. 2/- per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they made applications in writing requiring the Special Land Acquisition Officer to refer the matters to the Court for determination of compensation. Accordingly, references were made to the District Court, Kheda, which were numbered as Land Reference Cases No. 888/91 to 893/91. In the reference applications, it was pleaded by the claimants that their acquired lands were highly fertile and having regard to the income derived by the claimants from the sale of agricultural produces, they were entitled to compensation at the rate of Rs. 20/- per Sq.Mt. The reference applications were contested by the appellants by their common written statement, wherein it was inter-alia pleaded that the Special Land Acquisition Officer had taken into consideration all relevant factors before determining compensation and, therefore, reference applications should be dismissed. Upon rival assertions of parties, necessary issues for determination were raised by the reference Court at Exh.10. On behalf of the claimants, witness Babubhai Kalabhai, who was claimant in Land Reference Case No. 891/91 was examined at Exh.13. He testified before the Court that all the lands were situated in the sim of village Masra and they were fertile as well as even. The witness stated before Court that in the year 1989, the claimants were able to cultivate paddy crop of about 70 maunds, wheat crop of about 50 to 60 maunds and millet crop of about 40 to 45 maunds. The witness further stated before Court that at the relevant time price of paddy was Rs. 45/- to Rs.50/per 20 Kgs.; whereas price of wheat was Rs. 70/to Rs.80/per 20 Kgs. and that of millet was Rs.60/- per 20 Kgs. The witness asserted before the Court that each claimant was able to get net profit of Rs. 10,000/- to Rs. 12,000/- per Bigha from the sale of agricultural produces. The witness claimed in his deposition that village Masra at the relevant time had got facilities of S.T.Bus services, dispensary, Water Works, Seva Sahakari Mandli, Milk Society, School etc. and, therefore, the claimants were entitled to enhanced compensation. On behalf of the present appellants, witness Amarsinh Virjibhai Munia was examined at Exh.23. This witness admitted that the lands which were acquired were fertile lands and the claimants were raising three crops in a year. The witness did not deny figures given by the witness of the claimants regarding yield of crops as well as income realised by the claimants therefrom.

3. After considering the evidence led by the

claimants, the Reference Court held that Extract of Village Form 7/12 produced at Exhs. 15 to 20 indicated that the acquired lands were irrigated lands and the claimants were cultivating three crops in a year i.e. that of paddy, wheat and millet. The Reference Court further deduced that during the relevant period, the claimants were cultivating paddy worth Rs.3500/-, wheat worth Rs.4800/- and millet worth Rs.2700/- per Bigha. The Reference Court held that the average income of each claimant was Rs.3667/- per Bigha. Having regard to the facts of the case, the Reference Court was of the opinion that 1/3rd amount should be deducted towards costs of cultivation and accordingly, held that the net income of each claimant from sale of agricultural produces was Rs. 2445/- per Bigha. The Reference Court also held that facts of the case warranted application of multiplier of 14 and, therefore, according to Reference Court, market value of the acquired lands on the relevant date was Rs. 14.28 ps. per sq.mt. The claimants had also produced previous award of the Court rendered in main Land Reference Case No.323/86 at Exh.21. It indicated that lands of village Khijalpur were acquired pursuant to publication of preliminary notification on July 21, 1983 which was issued under section 4(1) of the Act and therein the Court had awarded compensation to the claimants at the rate of Rs. 13.10 ps. per sq. mt. The Reference Court was of the opinion that the said previous award was not only comparable, but also relevant for the purpose of determination of market value of acquired lands. In ultimate decision, Reference Court by the impugned award has held that the claimants are entitled to compensation at the rate of Rs. 14.28 ps. per sq.mt., giving rise to present appeals.

4. Mr. M.R.Raval, learned Counsel for the appellants submitted that the previous award of the Reference Court rendered in respect of lands of village Khijalpur was neither relevant nor comparable and, therefore, Reference Court was not justified in placing reliance on the same while ascertaining market value of the acquired lands in the present case. It was pleaded that no cogent and reliable evidence was led by the claimants regarding yield of crops as well as income realised by the claimants therefrom and, therefore, the impugned common award should be set aside. What was emphasised on behalf of the appellants was that the compensation determined by the Reference Court is excessive and, therefore, appeals should be allowed.

5. Mr. S.M. Amin, learned Counsel for the claimants submitted that previous award was rightly

relied upon by the Reference Court while determining compensation of the acquired lands, as it was comparable as well as relevant and, therefore, impugned award is not liable to be set aside on the ground that previous award of the Reference Court did not furnish any guidance to the Court for determination of market value of the acquired lands. Learned Counsel for the claimants emphasised that the evidence of witness Babubhai Kalabhai examined at Exh.13 clearly established yield of the crop as well as income realised by the claimants from the sale of crops and, therefore, determination of compensation made by the Reference Court should not be disturbed by the Court in present appeals.

6. We have heard the learned Counsel for the parties at length. The evidence of witness Babubhai Kalabhai recorded at Exh.13 indicated that the agricultural lands acquired were highly fertile and the claimants were able to raise three crops in a year. The fact that the claimants were raising three crops in a year is also admitted by the witness examined on behalf of the present appellants. The best method for evaluating land is sale instances of acquired lands or of similar lands situated near the acquired lands. However, in this case, neither any sale instance relating to acquired lands nor sale instances of similar lands situated nearby was produced by the parties to enable the Court to determine market value of the acquired lands on the relevant date. Under the circumstances, Reference Court was justified in considering the previous award of the Court rendered in respect of lands of village Khijalpur. Witness Babubhai Kalabhai has in terms testified before the Court that lands acquired in the present case and the lands of village Khijalpur were adjoining each other and having same fertility as well as level. This assertion made by the witness was never challenged by the present appellants. Though witness Amarsinh Virjibhai Munia was examined by the appellants at Exh.23, it was never brought to the notice of the Court through evidence of said witness that acquired lands were not similar to the lands of village Khijalpur or had certain disadvantage in comparison to the lands of village Khijalpur. It is well settled that previous award of the Court in respect of similar lands of nearby village and which has become final can be taken into consideration while determining market value of the lands acquired subsequently from an adjoining village. Learned Counsel for the appellants has stated at the Bar that previous award of the Reference Court in respect of lands of village Khijalpur which was produced at Exh.21 was subject matter of challenge before High Court in First Appeals No. 1637/92

to 1652/92 and there the High Court has reduced compensation from Rs.13.10 ps per sq.mt. to Rs. 11.00 per sq.mt. vide judgement dated September 8, 1992. Under the circumstances, the Court will have to proceed on the footing that the market value of the acquired lands as on the date of publication of notification under section 4(1) of the Act was Rs.11/- per sq.mt. As observed earlier, in the case of lands of village Khijalpur, notification under section 4(1) of the Act was published on July 21, 1983; whereas in the present case, notification under section 4(1) of the Act was published on June 26, 1989. It is well settled that when there is gap of time between publication of notifications, reasonable rise in price of lands can be considered in favour of the claimants because it is reasonable to presume that price of land increases with passage of time. Therefore, if reasonable rise in price of land is considered, we are of the view that the finding recorded by the Reference Court that the claimants would be entitled to compensation at the rate of Rs. 14.28 ps. per sq.mt. cannot be regarded as erroneous in any manner so as to warrant interference of the Court in present appeals. We do not find that compensation determined by the Reference Court is excessive in any manner and, therefore, the appeals cannot be allowed.

7. We may state that the Reference Court has also determined compensation on yield basis, but the Supreme Court in the case of Spl.Land Acquisition Officer, Davangere v. P. Veerabhadarappa, A.I.R. 1984 S.C. 774 has held that when evidence regarding sale instances or comparable award is available, yield method should not be resorted to for determination of market value of acquired lands and, therefore, we have not thought it fit to refer to the evidence led by the claimants regarding crop income while determining market value of the acquired lands.

8. We notice that in the operative part of the order, Reference Court has directed that in case of new tenure lands, 5% should be deducted towards Government share. Such a direction could not have been given in view of the judgment of the Supreme Court rendered in the case of State of Maharashtra vs. Babu Govind Gavate A.I.R. 1996 S.C. 904. Therein the Supreme Court has held that Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 was enacted to protect the right, title and interest of the tenant who purchased the property and became owner thereof with a view to see that he is not deprived of his ownership. But that, under no circumstances, gives power to the Government when it

acquires the land exercising the power of eminent domain to deduct any amount from the compensation payable to the owner of the land as determined under section 23(1) of the Act. What is emphasised is that the sanction required under section 43 is only when there is a bilateral valid agreement between the owner and a third party purchaser or a lessee or mortgagee etc. as envisaged under section 43(1) of the Act, but, when the State exercises its power of eminent domain and compulsorily acquires the land, the question of sanction under section 43 does not arise and, therefore, direction to deduct government share cannot be given. In view of the above-referred to authoritative principles laid down by the Supreme Court, direction to deduct 5% Government share from the compensation payable to the claimants cannot be sustained and will have to be set aside. We may state that the claimants have not filed any Cross-Objections in these appeals, but relief in favour of the respondents can always be granted in view of provisions of Order-41 Rule 33 of the Code of Civil Procedure and such a course is warranted in view of the principles laid down by the Supreme Court in the abovereferred to decision.

For the foregoing reasons, the appeals fail and are dismissed, with no order as to costs. The direction given by the Reference Court to deduct 5% Government share from the compensation payable to the claimants is set aside. It is clarified that the claimants shall not be entitled to additional amount of compensation payable under section 23(1-A) of the Act on solatium payable to them under section 23(2) of the Act. Rest of the directions given in the impugned award are hereby confirmed.

Office is directed to draw decree in terms of this judgment.

(patel)